

TCEQ DOCKET NO. 2015-1268-UIC

**APPLICATION BY URI, INC. FOR
RENEWAL AND MAJOR
AMENDMENT OF CLASS III
INJECTION WELL AREA PERMIT
No. UR02827**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2015 SEP 14 PM 3:37
CHIEF CLEANSING OFFICE

APPLICANT'S RESPONSE TO HEARING REQUESTS

Applicant URI, Inc. ("URI") files this, its Response to Hearing Requests ("Response"), pursuant to 30 TAC § 55.209(d) and other applicable rules of the Texas Commission on Environmental Quality ("TCEQ" or the "Commission"), and respectfully shows the following:

I. INTRODUCTION AND BACKGROUND

URI has applied to the TCEQ to renew and amend its Class III injection well area permit (No. UR02827) to continue its permit obligations to restore groundwater and plug and abandon wells and to authorize continued production mining at its well field (the "Kingsville Dome Mine" or "KVD") in Kleberg County, Texas. Permit No. UR02827 was initially issued to URI by the Texas Water Commission in 1986. This Area Permit authorized the mining of uranium on a site of 547 acres. In 1989, URI received approval of the expansion of the mining area to 2,135 acres. In conjunction with this mining authorization, URI also holds two Class I non-hazardous waste disposal well permits, WDW-247 and WDW-248, and has been issued separate Production Area Authorizations ("PAA") to allow mining specified zones within the UR02827 area. In-situ uranium mining operations have been actively conducted at various times at the KVD mine during the time period from 1988 to 2009. Since January 17, 2009 URI has ceased mining under UR02827 due to an economic downturn in the uranium market.

Pursuant to Texas Water Code Sec. 27.0513(b) and 30 TAC Sec. 331.7(g), uranium mining permittees were required to file a renewal application with the TCEQ before September 1, 2012 or their permit would automatically lapse. Due to a misunderstanding between URI and TCEQ, URI filed its application for renewal on September 24, 2012. Thereafter, the TCEQ concluded that as a result of the delay there is no current authorization for mining at the site, but that the obligations to restore groundwater and to plug and abandon the wells properly continue to be the responsibility of URI. On December 12, 2012, URI submitted an application for a major amendment of UR02827 to revive the authority of URI to conduct production mining activities at the site. These two applications have been consolidated by the TCEQ Executive Director (“ED”) and reviewed together during the agency’s administrative and technical review phases. The ED completed the technical review of the Application on March 4, 2015, and on that date the Notice of Application and Preliminary Decision (“NAPD”) was published. No public meeting was held as there was not sufficient interest to warrant such a meeting.

Notice of Receipt of Application and Intent to Obtain a Permit was published on July 7, 2013 in the Kingsville Record and Bishop News. The public comment period ended on May 26, 2015. After review of the comments received, the ED filed and served his Response to Comments (“RTCs”) on July 10, 2015.

TCEQ received public comments from only one individual, Mr. Eleuterio L. Saenz, during the comment period. His comments were addressed by the ED in its RTC.

II. LEGAL REQUIREMENTS FOR HEARING REQUESTS

TCEQ regulations addressing the requirements for responses to hearing requests are found at 30 TAC § 55.209(e). That section requires that responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing . . . ;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

These requirements are addressed below. The concluding section contains a restatement of the only issue identified as appropriate for referral, in terminology appropriate for referral.

III. DETERMINATION OF AFFECTED PERSONS

The Commission's rules provide that:

[A]n affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

Id. at § 55.203(a).

In determining whether an individual is an affected person, the rules require consideration of:

. . . all factors . . . including, but not limited to, the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person; [and]
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person

Id. at § 55.203(c).

URI has identified hearing requests (each a "Request" and collectively, the "Requests"), filed by 27 individuals. A hearing request was also filed by Kleberg County.

Based on the facts as stated in the Requests, including the self-stated proximity of the individuals' properties to the KVD mining area, URI agrees (subject to confirmation during discovery) that the following individuals are eligible to be named as parties in this proceeding:

- (1) Candelario Benavente, 383 N. CR 1070, Kingsville, Texas 78363;
- (2) Heraclio Benavente, 381 N. CR 1070, Kingsville, Texas 78363;
- (3) Maria Del Rosario Benavente, 383 N. CR 1070, Kingsville, Texas 78363;
- (4) Sabina Benavente, 381 N. CR 1070, Kingsville, Texas 78363;
- (5) Marie Bippert, 679 E. CR 2160, Kingsville, Texas 78363;
- (6) Will Bippert, 679 E. CR 2160, Kingsville, Texas 78363;
- (7) Robert De La Rosa, 706 E. Farm Road 1118, Kingsville, Texas 78363;
- (8) Rolando De La Rosa, 706 E. Farm Road 1118, Kingsville, Texas 78363;
- (9) Armando Garcia, 418 Garcia Hill Road, Kingsville, Texas 78363;
- (10) Beto Garcia, 418 Garcia Hill Road, Kingsville, Texas 78363;
- (11) Blanca Garcia, 418 Garcia Hill Road, Kingsville, Texas 78363;
- (12) Ferman Garza, 424 N. FM 2619, Kingsville, Texas 78363;
- (13) Nerio Martinez, 418 Garcia Hill Road, Kingsville, Texas 78363;
- (14) Olga Martinez, 418 Garcia Hill Road, Kingsville, Texas 78363;
- (15) Diana Medina, 383 N. CR 1070, Kingsville, Texas 78363;
- (16) Richard Scott Medina, Sr., 383 N. CR 1070, Kingsville, Texas 78363;
- (17) Carlos Ortegon, 418 Garcia Hill Road, Kingsville, Texas 78363;
- (18) Carlos Ortegon, 426 Garcia Hill Road, Kingsville, Texas 78363;
- (19) Daniel Ortegon, 418 Garcia Hill Road, Kingsville, Texas 78363;
- (20) Norma Garza Ortegon, 418 Garcia Hill Road, Kingsville, Texas 78363;
- (21) Alfonso Ramos, 2425 E. FM 1717, Kingsville, Texas 78363;
- (22) Eleuterio Saenz, 148 E. CR 2170, Kingsville, Texas 78363;

Each of these hearing requesters has timely filed a hearing request identifying that they have an interest in the potential impact of the applications on the groundwater at their property in the Garcia Hill area.

Also, the following individuals have indicated that they own mineral rights in the area of the KVD mine and have expressed concern about the potential impact on their mineral rights:

- (23) Dale Cumberland, 1421 Sleepy Hollow Lane, New Braunfels, Texas 78130;
- (24) Elizabeth Cumberland, 761 Martindale Falls Road, Martindale, Texas 78655; and
- (25) Jeanette Cumberland Hix, 2213 Brun Street, Houston, Texas 77019.

Each of these hearing requests was also timely filed, and URI agrees that they are eligible to be named as parties to this proceeding.

Finally, URI has no objection to Kleberg County being identified as a party to this proceeding.

URI is recommending that the hearing requests of two individuals, Mark Walsh and Joan Underbrink, be denied. Mr. Walsh has identified his property as 3931 Boyd Street, Kingsville, Texas. This address is approximately 4 miles from the KVD mine area. URI concludes that Mr. Walsh resides beyond a distance where his concerns could be considered to be different from those of the general public and his description of his concerns do not otherwise identify any personal justiciable interests to overcome his proximity shortcoming. His statements are generally stated references to "the quality of water in the Goliad Aquifer in Kleberg County" and "the use of millions of gallons of water and decrease (of) available water for livestock and agricultural use." Mr. Walsh's other statements are beyond the scope of the agency's jurisdiction in this matter and not tied to any comment made during the comment period. Ms. Underbrink's hearing request was filed on August 31, 2015, eighteen days after the deadline for filing hearing requests (August 13, 2015); therefore, Ms. Underbrink's hearing request is not timely. Neither of these individuals should have their hearing requests approved and neither of these individuals should be designated as parties to the hearing.

IV. ISSUES ELIGIBLE FOR REFERRAL

Pursuant to 30 T.A.C. Sec.55.209(e)(4), only issues raised in a timely public comment may be referred for consideration in the contested case hearing. In this case, there was only one issue raised in the single public comment that was filed during the comment period. That comment, by Mr. Eleuterio Saenz, has been identified in the ED's RTC as follows:

"Mr. Saenz commented that URI has contaminated Water Well 24 located in the Garcia Hill area in Kleberg County northwest of URI's Production Area 3 at the Kingsville Dome Mine."

URI acknowledges that this comment is within the scope of several of the hearing requesters' issues, though often phrased in broader terms in the hearing requests. URI does not dispute that the issue is relevant and material to the Commission's decision on the application. Because Mr. Saenz's comment provides the limit for the scope of the issues that are eligible for referral, URI recommends that the sole issue to be referred to the ALJ for consideration in the contested case hearing be characterized as follows:

"Has URI's mining in Production Area 3 caused the contamination of water in Water Well 24, and if so, does such contamination represent a basis for changes in the draft permit?"

All other issues raised in the numerous hearing requests are beyond the scope of Mr. Saenz's comment and this single issue, and therefore there are no other issues eligible to be referred for consideration at the contested case hearing.

V. DURATION OF HEARING §55.209(e)(7)

Responses to hearing requests must address the maximum expected duration of the hearing from the first day of the preliminary hearing to the issuance of the proposal for decision.

§ 55.209(e)(7). Considering the single issue that could potentially be referred and the complexity of that issue, URI recommends that eight (8) months is an appropriate duration.

VI. MEDIATION

URI is not requesting a referral to ADR at this time.

VII. CONCLUSION

For the reasons stated above, and subject to later discovery, URI requests that only the hearing requests of the following individuals and entities be granted:

- (1) Candelario Benavente, 383 N. CR 1070, Kingsville, Texas 78363;
- (2) Heraclio Benavente, 381 N. CR 1070, Kingsville, Texas 78363;
- (3) Maria Del Rosario Benavente, 383 N. CR 1070, Kingsville, Texas 78363;
- (4) Sabina Benavente, 381 N. CR 1070, Kingsville, Texas 78363;
- (5) Marie Bippert, 679 E. CR 2160, Kingsville, Texas 78363;
- (6) Will Bippert, 679 E. CR 2160, Kingsville, Texas 78363;
- (7) Robert De La Rosa, 706 E. Farm Road 1118, Kingsville, Texas 78363;
- (8) Rolando De La Rosa, 706 E. Farm Road 1118, Kingsville, Texas 78363;
- (9) Armando Garcia, 418 Garcia Hill Road, Kingsville, Texas 78363;
- (10) Beto Garcia, 418 Garcia Hill Road, Kingsville, Texas 78363;
- (11) Blanca Garcia, 418 Garcia Hill Road, Kingsville, Texas 78363;
- (12) Ferman Garza, 424 N. FM 2619, Kingsville, Texas 78363;
- (13) Nerio Martinez, 418 Garcia Hill Road, Kingsville, Texas 78363;
- (14) Olga Martinez, 418 Garcia Hill Road, Kingsville, Texas 78363;
- (15) Diana Medina, 383 N. CR 1070, Kingsville, Texas 78363;
- (16) Richard Scott Medina, Sr., 383 N. CR 1070, Kingsville, Texas 78363;
- (17) Carlos Ortegon, 418 Garcia Hill Road, Kingsville, Texas 78363;
- (18) Carlos Ortegon, 426 Garcia Hill Road, Kingsville, Texas 78363;
- (19) Daniel Ortegon, 418 Garcia Hill Road, Kingsville, Texas 78363;
- (20) Norma Garza Ortegon, 418 Garcia Hill Road, Kingsville, Texas 78363;
- (21) Alfonso Ramos, 2425 E. FM 1717, Kingsville, Texas 78363;
- (22) Eleuterio Saenz, 148 E. CR 2170, Kingsville, Texas 78363; and
- (23) Dale Cumberland, 1421 Sleepy Hollow Lane, New Braunfels, Texas 78130;
- (24) Elizabeth Cumberland, 761 Martindale Falls Road, Martindale, Texas 78655;
- (25) Jeanette Cumberland Hix, 2213 Brun Street, Houston, Texas 77019; and
- (26) Kleberg County.

Further, URI requests that the following issue be referred:

“Has URI’s mining in Production Area 3 caused the contamination of water in Water Well 24, and if so, does such contamination represent a basis for changes in the draft permit?”

Finally, URI prays that the hearing requests of any other Requestors be denied, and that any other issues not be referred. URI further prays for any and all other relief to which it may show itself entitled.

Respectfully submitted,

LLOYD GOSSELINK
ROCHELLE & TOWNSEND, P.C.
816 Congress Ave., Suite 1900
Austin, Texas 78701
(512) 322-5800
(512) 472-0532 (Fax)

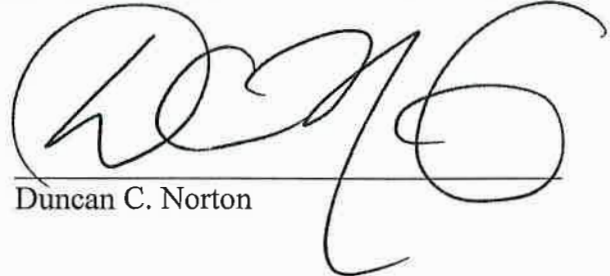
By: 

DUNCAN C. NORTON
State Bar Number 15103950

ATTORNEY FOR URI, INC.

URI, INC.
DOCKET NO. 2015-1268-UIC; PERMIT NO. UR02827
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Applicant's Response to Hearing Requests has been served on the following counsel/parties of record by electronic mail, certified mail (return receipt requested), regular U.S. Mail, facsimile transmission and/or hand delivery on this the 14th day of September, 2015.



Duncan C. Norton

FOR THE APPLICANT

Dain McCoig, Vice President
South Texas Operations
URI, Inc.
641 East FM 1118
Kingsville, Texas 78363-2628
Tel: (361) 595-5731
Fax: (361) 595-0403

Duncan C. Norton
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas
Tel: (512) 322-5884
Fax: (512) 472-0532

FOR THE EXECUTIVE DIRECTOR

Don Redmond, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

Frederick Duffy, Technical Staff
Texas Commission on Environmental Quality
Radioactive Materials Division, MC-233
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6891
Fax: (512) 239-6464

Brian Christian, Director
Texas Commission on Environmental Quality
Environmental Assistance Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-5678

FOR PUBLIC INTEREST COUNSEL

Vic McWherter, Public Interest Counsel
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6363
Fax: (512) 239-6377

FOR ALTERNATIVE DISPUTE RESOLUTION

Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4010
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

Bridget C. Bohac
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

REQUESTER(S):

See attached list.

REQUESTER(S)

CANDELARIO Q BENAVENTE
383 N COUNTY ROAD 1070
KINGSVILLE TX 78363-8851

HERACLIO BENAVENTE
381 N COUNTY ROAD 1070
KINGSVILLE TX 78363-8851

MARIA DEL ROSARIO
BENAVENTE
383 N COUNTY ROAD 1070
KINGSVILLE TX 78363-8851

SABINA BENAVENTE
381 N COUNTY ROAD 1070
KINGSVILLE TX 78363-8851

MARIE BIPPERT
679 E COUNTY ROAD 2160
KINGSVILLE TX 78363-2625

MARK M WALSH
3931 BOYD ST
KINGSVILLE TX 78363-7420

BETO GARCIA
418 GARCIA HILL RD
KINGSVILLE TX 78363-8902

BLANCA GARCIA
418 GARCIA HILL RD
KINGSVILLE TX 78363-8902

FERMAN GARZA
424 N FM 2619
KINGSVILLE TX 78363-8933

JEANETTE CUMBERLAND HIX
2213 BRUN ST
HOUSTON TX 77019-6507

NERIO MARTINEZ
418 GARCIA HILL RD
KINGSVILLE TX 78363-8902

OLGA MARTINEZ
418 GARCIA HILL RD
KINGSVILLE TX 78363-8902

DIANA B MEDINA
383 N COUNTY ROAD 1070
KINGSVILLE TX 78363-8851

WILL BIPPERT
679 E COUNTY ROAD 2160
KINGSVILLE TX 78363-2625

BRUCE C CUMBERLAND
11812 LINDEN GROVE DR
FORT WAYNE IN 46845-1961

DALE CUMBERLAND
1421 SLEEPY HOLLOW LN
NEW BRAUNFELS TX 78130-
3341

ELIZABETH CUMBERLAND
761 MARTINDALE FALLS RD
MARTINDALE TX 78655-2530

ELIZABETH CUMBERLAND
PO BOX 537
MARTINDALE TX 78655-0537

RICHARD SCOTT MEDINA, SR
383 N COUNTY ROAD 1070
KINGSVILLE TX 78363-8851

CARLOS ORTEGON
418 GARCIA HILL RD
KINGSVILLE TX 78363-8902

CARLOS ORTEGON
426 GARCIA HILL RD
KINGSVILLE TX 78363-8902

DANIEL ORTEGON
418 GARCIA HILL RD
KINGSVILLE TX 78363-8902

NORMA GARZA ORTEGON
418 GARCIA HILL RD
KINGSVILLE TX 78363-8902

ALFONSO R RAMOS
2425 E FM 1717
KINGSVILLE TX 78363-8835

ELEUTERIO L SAENZ
148 E COUNTY ROAD 2170
KINGSVILLE TX 78363-2601

ROBERT DE LA ROSA
706 E FM 1118
KINGSVILLE TX 78363-2633

ROLANDO DE LA ROSA
706 E FM 1118
KINGSVILLE TX 78363-2633

DAVID FREDERICK
LOWERRE FREDERICK
PERALES
ALLMON & ROCKWELL
707 RIO GRANDE ST STE 200
AUSTIN TX 78701-2733

ARMANDO GARCIA
418 GARCIA HILL RD
KINGSVILLE TX 78363-8902